

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

**RAYTHEON TECHNICAL
SERVICES COMPANY, L.L.C.,¹**

Employer

and

Case 28-RC-6437

**INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL 351, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

International Union of Operating Engineers, Local 351, AFL-CIO (Petitioner), seeks an election in a voting group comprised of all temporary employees, including Warehouse Specialists, Wood Workers, Material Handlers, and Laborers employed by Raytheon Technical Services Company, L.L.C. (Employer), at its Ammunition Supply Point at McGregor Range in New Mexico (the ASP). The Petitioner currently represents a group of four permanent employees at the ASP (the certified Unit), and proposes that the election among the ASP's 11 temporary employees should be a self-determination election pursuant to *Armour & Co.*, 40 NLRB 1333 (1942), and *The Globe Machine & Stamping Co.*, 3 NLRB 297 (1937), because they share a community of interest with the certified Unit. The certified Unit does not contain three of the classifications the Petitioner now seeks to represent among the temporary employees (Supply Technician, Department Lead, and General Clerk).

Contrary to the Petitioner, the Employer contends that the temporary employees are ineligible to vote, because they face a certain job termination date. The Employer additionally argues that an *Armour-Globe* self-determination election is inappropriate, because it would result in a unit containing the temporary job classifications of Supply Technician, Department Lead, and General Clerk, while excluding permanent employees in the same classifications. The Employer additionally argues that a self-determination election could result in the domination of the small number of permanent employees by the newly added temporary employees, and the corresponding "overshadowing" of their interests.

Based on the reasons set forth more fully below, I find that the temporary employees who are the subject of the petition are eligible to vote under the Act, because, as of the date of these proceedings, they have a reasonable expectation of continued employment and an

¹ The name of the Employer appears as corrected at the hearing.

uncertain termination date. I further find appropriate a self-determination election among the temporary employees, who share a significant community of interest with their permanent counterparts, sufficient to offer them the option to join this pre-existing unit. I do, however, find merit to the Employer's concerns regarding a residual unit, and, therefore, would include within the appropriate unit all employees (both permanent and temporary) in the job classifications, including Supply Technician, Department Lead, and General Clerk, sought by the Petitioner.

DECISION

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. **Hearing and Procedures:** The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. **Jurisdiction:** At hearing, the parties stipulated, and I find, that the Employer, Raytheon Technical Services Company, L.L.C., a Delaware corporation with an office and place of business located on the McGregor Range on the Fort Bliss Military Base, New Mexico, is engaged in the business of servicing and maintaining defense and aerospace systems. During the 12-month period preceding the hearing in this matter, the Employer supplied goods and services valued in excess of \$50,000 directly to the United States Government. Additionally, I note that the Employer's performance of services for a government contractor has a substantial impact on the national defense. See *Ricks Constr. Co.*, 259 NLRB 295 (1981); *Castle Instant Maintenance/Maid*, 256 NLRB 130 (1981), *enfd.* 685 F.2d 440 (9th Cir. 1982). The Employer is engaged in commerce within the meaning of the Act, and, therefore, the Board's asserting jurisdiction in this matter will accomplish the purposes of the Act.

3. **Claim of Representation:** The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. **Statutory Question:** A question affecting commerce exists concerning the representation of certain employees within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. **Unit Finding:** The issues presented in this case are: (a) whether employees employed by the Employer at the ASP and classified as "temporary," including Warehouse Specialists, Wood Workers, Material Handlers, and Laborers, are eligible to vote under the Act, and (b) whether such employees, as a voting group, are entitled to a self-determination election, including the option of voting for inclusion into a unit with certain of the Employer's permanent employees. To provide a context for my discussion of these issues, I will present the temporary employees' representation history with the Employer, including the parties' past positions on their eligibility to vote; the Employer's organizational and supervisory

structure; the temporary employees' prospects for future employment with the Employer; their relationship with the permanent employees; and the history relating to the Employer's transportation branch temporary employees.

A. Procedural and Representation Background

The Petitioner currently represents certain permanent employees of the Employer who work at the same location as the temporary employees the Petitioner seeks to represent in this proceeding. In Case 28-RC-6380, the Petitioner and the Employer agreed to a stipulated election, which was held on May 21, 2004, in a unit consisting of:

All full-time and regular part-time, hourly, Forklift Operators, Material Handlers, Woodworkers and Laborers employed by the Employer at the Ammunition Supply Point on the McGregor Range, on the Ft. Bliss Military Reservation; excluding all other employees, Temporary Employees, Plant Clericals, Supply Clerks, Department Leads, Guards and Supervisors as defined in the Act.

An election was held, and on July 8, 2005, the Union was certified as the representative of the employees in this unit, which I have earlier referred to as the certified Unit.

On November 2, 2005, the Petitioner filed a petition in Case 28-RC-6416 seeking to represent the following temporary employees at the ASP:

All Temporary Employees employed by the employer at, the Ammunition Supply Point, including Warehouse Specialist, Wood Worker, Material Handler, and Laborers at McGregor Range in New Mexico, [excluding] all supervisors as defined by the Act.

At the hearing in Case 28-RC-6416, the Employer took the position that this constituted an inappropriate unit, because the Petitioner had failed to include two non-supervisor positions at the ASP: Supply Technician, Department Lead, and General Clerk. On the record, the Petitioner moved, unopposed, to amend its petition to include these positions. However, in mid-hearing in Case 28-RC-6416, the Petitioner withdrew its petition.

On February 9, 2006, the Petitioner filed the petition which is the subject of this proceeding, seeking to represent the temporary employees at the ASP, with no exclusion for Plant Clericals, Supply Clerks, Department Leads, or Guards. At the hearing in this matter, the Petitioner amended its petition to explicitly include two positions excluded from the certified Unit: Supply Technician, Department Lead, and General Clerk. The Petition seeks a self-determination election among this group of employees to determine whether they desire to be represented by the Petitioner in the certified Unit.

In addition, and as explained in relevant detail below, the Petitioner, in May 2004, in Cases 16-RC-10582 and 16-RC-10583, sought to represent two additional units of permanent

employees who work for the Employer in its Transportation Department and at a different location than the employees at issue in this case.²

B. The Employer's Organizational and Supervisory Structure

The Employer provides logistical services for the United States Army at its Fort Bliss facility, located in El Paso, Texas. Fort Bliss serves as a staging point where military personnel and equipment are marshaled before being deployed into a theater of operation for combat and combat support missions. In recent years, numerous active Army, Reserve, and National Guard units destined for Afghanistan and Iraq have been mobilized through Fort Bliss. Additionally, Fort Bliss serves as a major defense artillery training installation for active Army, Reserve, and National Guard units. The Employer provides logistical support for these activities, including managing the flow of equipment, soldiers, and civilians into and out of the base for purposes of training and deployment.

The Employer staffs its Fort Bliss operation pursuant to a contract with a general contractor, The Cube Corporation d/b/a VT Griffin (Base Contract). The Base Contract commenced on August 1, 2002, and has a termination date of July 31, 2007. The Employer's Director of Logistics Program Manager, Rafael De Jesus, is responsible for the administration of the Base Contract. Under the terms of the Base Contract, the Employer's logistics operation is organized into three branches, a Transportation Branch, a Supply Branch, and a Materials Maintenance Branch. Each of the three branches has a manager who reports directly to De Jesus. The employees sought by the Petitioner work in the Supply Branch, under the Ammunition Supply department. Unlike the Employer's other employees who work under the Base Contract, these employees do not work physically near the base, but instead work approximately 23 miles away at the ASP, which is located in New Mexico.

The primary mission of the employees at the ASP is to request, supply, and issue classified munitions to military personnel who are operating or training at Fort Bliss. At its inception, the Base Contract funded, and the Employer employed, four "regular" or permanent employees at the ASP to perform these functions for the war effort in Iraq. There are currently eight permanent employees at the ASP. The record does not establish whether any of these employees were recruited from the pool of temporary ASP employees.

C. The Temporary Employees' Tenure, Terms and Conditions of Employment, and Relationship with their Permanent Counterparts

As witnesses explained at hearing, the United States Government's "Global War on Terrorism" effort resulted in a surge of activity at Ft. Bliss, and corresponding increase in demand for the munitions support provided at the ASP. The Base Contract features an annual option, which may be renewed at the sole discretion of the Army, and the temporary employees' positions have been funded through the Army's exercise of this option. On August 1, 2003, the Army issued a "Subcontract Modification," pursuant to which it provided

² The Petitioner withdrew its petitions in Cases 16-RC-10582 and 16-RC-10583, after the issuance of a Decision and Direction of Election.

funding for four additional positions at the ASP: two Warehouse Specialists and two Wood Workers. Employees were recruited for these positions, and each received an offer letter stating that their offer was for “temporary employment.” The record indicates that these employees were informed by their offer letters that their employment would end on July 31, 2004. It did not.

Instead, on August 1, 2004, the Army issued another Subcontract Modification, extending funding for the current positions and providing funding for five additional positions at the ASP: two Warehouse Specialists and three Wood Workers. Once again, the employees hired received an offer letter for “temporary employment.” The record indicates that these employees were informed by their offer letters that their employment would end on July 31, 2005. In April or May 2005, De Jesus held a meeting with all ASP employees, both permanent and temporary, to convey the Employer’s position about the upcoming Union election. During the meeting, De Jesus instructed the temporary employees that their employment “would probably be healthy [and] continue on due to the war effort.” He also told employees that, as long as there was a war going on, they would continue working. Robert Silveria, a temporary Wood Worker at the ASP since July 2004, testified that De Jesus instructed the employees, “just because we had temporary titles, not to worry, that as long as the war was going on, that we would have our jobs and the contracts would just keep getting renewed and renewed.”

De Jesus’ projection concerning the temporary employees’ job security was accurate. In June 2005, the Army issued another Subcontract Modification, providing funding for the ASP temporary employees, as well as two additional positions at the ASP.³ The two individuals who were awarded these positions each signed an employment agreement stating that they were being offered “temporary employment not to exceed the date of July 31, 2006.” In early July 2005, the Army issued a “Partial Termination for Convenience” with respect to this Subcontract Modification. Within two days, however, the Army rescinded its cancellation, stating, “[i]t cannot be stated presently if this rescindment is permanent.” There is no evidence that the employees were warned that this event had changed their prospects for continued employment.

At the hearing, the Employer’s witnesses admitted that nine of the eleven temporary employees currently working at the ASP have already worked almost a year past their stated “termination date” of July 31, 2005, as set forth in their offer letters. According to the Employer’s witnesses, barring the Army issuance of another Subcontract Modification, the temporary employees will be terminated when the current Subcontract Modification expires on July 31, 2006. The Employer’s witnesses testified that the Employer has no control over whether the Army will exercise its option for another year. The record does not reveal whether any of the temporary employees had any prior history of employment with the Employer, but the Employer’s witnesses testified that no plans exist to employ these employees if the funding is no longer available.

³ According to the record, these two positions were General Clerk III, and one other position, which was either a Supply Technician Lead or a Warehouse Specialist.

As to the temporary employees' terms and conditions of employment, the record reveals that the sole distinguishing characteristic of the temporary employees is the Army's control over their continued tenure. On all other grounds, these employees were described as indistinguishable from, and fully integrated and interchangeable with, their permanent counterparts. The two groups of employees share work rules, work under the same pay scale, and receive the same benefits. They interact on a daily basis, are expected to work together, and regularly perform each other's work. The Employer's Business Finance Manager, Leonor Torrez, testified that "the only difference" between the temporary and permanent employees is that the employment of the former "will end on a date certain."

D. The Transportation Branch Temporary Employees

As noted above, this is not the first time the issue of temporary employees' voting rights has arisen in connection with the Employer's Fort Bliss operations. In May 2004, the Petitioner petitioned in Cases 16-RC-10582 and 16-RC-10583 for two units of employees who work under the Transportation Branch. A hearing was conducted and a Decision and Direction of Election issued in those cases. I take administrative notice of those proceedings. At the time of the hearing in those cases, the employees who were the subject of the petitions were working under the Base Contract, and an option year that ended on July 31, 2004. At those proceedings, the Employer argued that the Petitioner had improperly excluded the temporary employees because the July 31, 2004 termination date was "artificial" and purely based on the ending date of the option year. The Employer further argued that the tenure of the temporary employees was dependent on how long the war in Iraq and Afghanistan took, and that it had informed the employees that, based on the political situation in Iraq, the likelihood of their tenure being extended beyond July 31, 2004, was very good. These factors, the Employer argued, demonstrated that the temporary employees had a reasonable expectation of continued employment. The Regional Director of Region 16 rejected the Employer's arguments, based on the fact that the record contained no evidence of any prior practice of extending the employees' tenure. In these circumstances, the Regional Director found that the Employer's arguments were speculative and premature. As noted above, the record in these proceedings establishes that, by contrast, the temporary employees at issue here have experienced longevity in employment beyond their initial projected separation dates.

E. Legal Analysis and Determination

1. The Voting Eligibility Issue

Under Board law, a temporary employee is ineligible to be included in a bargaining unit, and the employee's status is to be tested as of the eligibility payroll date. *Pen Mar Packaging Corp.* 261 NLRB 874 (1982). The Board finds employees eligible to vote if, on the voting eligibility date, their tenure of employment is "uncertain." See *St. Thomas-St. John Cable TV*, 309 NLRB 712 (1992); *Personal Products Corp.*, 114 NLRB 959, 960 (1955). On the other hand, if the "prospect of termination [is] sufficiently finite on the eligibility date to dispel reasonable contemplation of continued employment," they will be considered temporary and, therefore, ineligible. *St. Thomas-St. John Cable TV*, 309 NLRB at 713 (citing

Pen Mar, supra). For example, in *Marian Medical Center*, 339 NLRB 127, 128 (2003), a case cited by the Employer, a part-time maintenance worker was transferred into a new facility covered by the petitioning union's unit description approximately five months before the election, and was working there during the payroll eligibility period. The employer planned to transfer the employee back to his regular job as soon as certain renovations were completed on the facility. The duration of the renovations, the Board found, was a "finite, ascertainable term," and the employee was, therefore, deemed ineligible to vote. *Id.* at 129.

Where, however, an employee is initially hired for a certain term but then remains employed past that date and the voting eligibility date occurs during this "holdover period," their status during this period will be examined for definiteness to determine their eligibility. "[E]mployees originally hired as temporary employees, retained beyond the original term of their employment, and subsequently employed for an indefinite period, are included in the unit." *MGM Studios of New York, Inc.*, 336 NLRB 1255, 1257 (2001) (citing *Orchard Industries*, 118 NLRB 798, 799 (1957)). Thus, the Board distinguishes classic "temporary assignment" situations, such as that presented by *Marian Medical Center*, from those in which employees classified as temporary are retained for a substantial period beyond their original term of their employment, without reference to a specific ending date or reference to a specific work assignment of contingency. The Board instructs that the latter should be allowed to vote. *Marian Medical Center*, 339 NLRB at 129, n.6.

For example, in *MGM Studios of New York, Inc.*, 336 NLRB 1255 (2001), the Board reversed the Regional Director's finding that a group of carpenters and welders, held over from their original six-month assignment, were ineligible to vote. MGM installed architectural features on construction projects, on a project-by-project basis. Although completion dates were scheduled for projects, it was not unusual for those dates to change, and such change was frequently out of MGM's control. To address workforce fluctuations, MGM obtained temporary employees from the various labor organizations, including the petitioner-union. Effective February 1, 2000, the union supplied MGM with carpenters and welders for work on a casino project under a six-month contract. Before completing the casino project, MGM started work on another project at an airport. Because MGM needed carpenters and welders for the airport project, the parties agreed to extend the original contract by 60 days to September 30, 2000. During this period, the casino project, but not the airport project, was finished, and the agreement expired. MGM retained the "temporaries" on its payroll, and they continued to work on the airport project, which was then extended until April 15, 2001. MGM also began to use the carpenters and welders for other projects. At hearing, however, MGM argued that these employees were ineligible temporary employees, because it anticipated laying them off by the April 15, 2001 project end date. The Regional Director agreed, but the Board reversed, finding persuasive the fact that the employees had been retained for a "significant period" (eight months) following their initial term of employment, as well as the fact that the project completion dates were themselves subject to change and were uncertain. The Board concluded that, in the face of this evidence, the carpenters' and welders' tenure could not be characterized as ending with a "date certain," and that they could reasonably contemplate continued employment beyond the term for which they were hired.

An employer may not defeat employees' voting rights merely by structuring their employment with an artificial termination date. In this regard, the Board has held that so-called temporary employees working under a series of one-year Army contracts are in fact eligible to vote. In *Harbert Int'l Services*, 299 NLRB 472 (1990), the Board considered the voting eligibility of employees at the Army's Fort Leonard Wood base in Missouri, who were classified as "temporary." According to the employer in that case, a temporary employee was "one who was hired for a definite period of time, usually 1 year." *Id.* The employer's witness testified, however, that these temporary appointments could, and regularly were, extended in one-year increments for up to four years, and evidence was presented of one temporary employee who had been working for three years under such extensions. The ALJ concluded that, under these circumstances, the employees' status as temporary employees "was more so in name than in actuality," and the employees could reasonably expect their employment to be continued for extended periods of time. *Id.* at 478. The Board agreed, finding that the evidence was insufficient to establish that, when initially hired under this regime, the employees actually had definite termination dates. *Id.* at 472.

The Board has also held that, where a temporary employee is retained beyond her initial tenure for what is purported to be a date certain, the employer may, by its actions and representations, demonstrate that the "holdover" period is actually fluid and subject to change, and that the employee could reasonably believe she was employed indefinitely. For example, in *WDAF Fox 4*, 328 NLRB 3 (1999), an employee, Jahn, was hired on August 28, 1998, for a temporary sports department position and told she would be employed until October 30, 1998. During this time, the employer, a news station, searched for a permanent employee for the department. An acceptable applicant was recruited in mid-October, but could not start until November 13. Jahn was requested to stay until then, and was, therefore, working during the payroll eligibility period for the election occurred. During the time she was employed, Jahn's station manager encouraged her to improve her skills and suggested that she might be eligible for permanent employment elsewhere at the station. Although Jahn was on notice of her new termination date -- to the *exact day* her permanent replacement would arrive -- the Board found that she did *not* have a "date certain" for the termination of her employment. Instead, it found that the station had acted inconsistently with such a position in two ways. First, by extending her initial term, the employer "had demonstrated its termination dates were not immutable." Second, the employer had made her contemplation of continued employment reasonable when it "sought to allay [her] fears regarding the termination of her employment."

In finding the ASP temporary employees eligible to be included in the certified Unit, I rely on several factors raised in the above cases. First, like the employees in the *MGM Studios* case, their employment has been extended significantly since the initial termination date they were given upon hire, and, by renewing the employees' initial one-year term, the Employer has demonstrated that the termination dates are certainly not immutable. Indeed, the Employer's July 31 date is, by its own admission, artificial and simply designed to track the funding received from the Army. Like the employees in *Harbert Int'l Services*, the vast majority of the ASP temporary employees have worked under successive contracts, and have even been assured that, as long as the war was ongoing, the contracts "would just keep getting renewed and renewed." Although the record contains no evidence that the ASP temporary employees were offered permanent positions elsewhere with the Employer, this seems

plausible, considering that, for the time being, there is simply no reason to believe their current positions will not be required.

Second, the record discloses that the Employer has gone out of its way to reassure the employees that their temporary title is meaningless, that their funding contracts will be renewed for the foreseeable future, and that their jobs are secure. In this regard, the fact that the employees are aware that the Army, and not the Employer, retains control over funding their positions does not suffice to divest them of their voting rights. On at least two occasions, the Board has explicitly rejected efforts to exclude employees from bargaining units based solely on the fact that their tenure was subject to funding constraints beyond the control of their employer. See, e.g., *Mon Valley United Health Services, Inc.*, 238 NLRB 916, 926 (1978) (rejecting attempt to exclude federally funded Manpower employees on grounds that their length of employment was subject to financial constraints of outside funding source); *Evergreen Legal Services*, 246 NLRB 964 (1979) (rejecting attempt to exclude employees whose positions are funded through Comprehensive Employment and Training Act administered through United States Department of Labor, on same grounds). The Employer has offered no reason why I should depart from the reasoning of these cases, and I decline to do so.

Finally, I find the Employer's reliance on the *Marian Medical Center* decision inappropriate for two reasons. First, that decision simply did not address the issue faced here, that is, the situation of employees "held over" beyond their initial term of employment. Considering the Board's pronouncement on how an employer's actions during such a holdover period may jeopardize the immutability of any "date certain," a case not involving such a fact pattern is of limited value here. But *Marian Medical Center* is distinguishable from this case in a more fundamental way. While *Marian Medical Center* involved the four-month temporary transfer of an employee pending completion of a scheduled building renovation, this case involves the recruitment and employment, since August 2004 (and in some cases August 2003), of employees who will apparently be retained until the resolution of a "Global War on Terrorism," a commitment, the scope and duration of which is inherently subject to change with little or no notice. It is frankly hard to imagine a contingency less ascertainable. As such, I find the *Marian Medical Center* decision inapposite.

2. The Self-Determination Issue

Where temporary employees are assigned to job classifications included within an established unit, a "community of interest" analysis is appropriate to determine the proper scope of the unit. *Gourmet Award Foods*, 336 NLRB 872 (2001). It is well settled Board law that a union need not seek to represent only the most appropriate unit or most comprehensive unit, but only an appropriate unit. *Transerv Systems*, 311 NLRB 766 (1993); *Morand Bros. Beverages Co.*, 91 NLRB 409 (1950). As explained in *Weldun International*, 321 NLRB 733, 751 (1996):

The issue is whether the unit sought by the Union is appropriate, not whether Respondent's proposed unit or any other unit is more appropriate or even the most appropriate. See *Morand Brothers Beverage Co.*, 91 NLRB 409 (1950),

enfd. 190 F.2d 576 (7th Cir. 1951). See also *Gateway Equipment Co.*, 303 NLRB 340 (1991).

In determining unit scope, the Board first considers the petitioning union's proposals. If the unit sought is an appropriate unit, the inquiry ends. If it is inappropriate, the Board will scrutinize the employer's proposals. *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). In deciding whether a unit is appropriate, the Board examines various factors, including differences or similarities in the method of wages or compensation, hours of work, employment benefits, supervision, working conditions, job duties, qualifications, training, and skills. The Board also considers the degree of integration between the functions of employees, contact with other employees, interchange with other employees, and history of bargaining. *Overnite Transportation Co.*, 322 NLRB 723, 724 (1996), citing *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). The petitioner's desire as to the unit is a relevant consideration, but not dispositive. *Florida Casino Cruises*, 322 NLRB 857, 858 (1997), citing *Airco, Inc.*, 273 NLRB 348 (1984).

The Petitioner seeks a self-determination election among the ASP temporary employees to establish whether they wish to be included in the certified Unit or to remain unrepresented. The Board has consistently held that groups of employees omitted from an established bargaining unit constitute appropriate residual units, provided they include all the unrepresented employees of the type covered by the petition. *Fleming Foods*, 313 NLRB 948 (1994). In this case, the Employer argues that the petitioned-for unit does not constitute an appropriate residual unit, because it seeks temporary clerical employees and leads, but not their permanent counterparts. I agree with this position, but do not find this a basis for dismissing the instant petition. Based on the record before me, I find that a self-determination election among the petitioned-for ASP temporary employees, as well as permanent employees in the positions of Supply Technician, Department Lead, and General Clerk, appropriate.

In reaching this conclusion, I rely on several factors. First, with respect to community of interest factors, the temporary and permanent employees are fully integrated and interchangeable with one another. They share identical work rules, pay scale, and benefits. They are under the same supervisory structure and regularly perform each other's work. There is no functional difference between these two groups. By the Employer's own admission, the only difference between the two groups is that the temporary employees' continued employment is subject to funding provided by a third party. As the Board has noted, there exists a "critical nexus between an employee's temporary tenure and the determination whether he shares a community of interest with the unit employees sufficient to qualify him as an eligible voter." *Marian Medical Center*, 339 NLRB 127, 128 (2003). However, the Board has rejected efforts to exclude employees from bargaining units based solely on the fact that their tenure is subject to funding constraints beyond the control of their employer. See, e.g., *Mon Valley United Health Services, Inc.*, 238 NLRB 916 (1978). Moreover, as the Employer itself admits, the termination dates set forth in employees' offer letters are, in fact, "artificial," and the employees do not truly face a "finite, ascertainable term" of employment. It follows that, should the temporary employees choose to be represented along with their permanent counterparts, that this would constitute an appropriate unit. *Id.*

Second, while I find that the temporary employees share a sufficient community of interest to justify their potential inclusion within the certified Unit of their permanent counterparts, I do find merit in the Employer's contention directing a self-determination election in the petitioned-for unit would create an unacceptable residual unit. The parties have not disputed whether the petitioned-for unit itself would constitute an appropriate bargaining unit, that is, whether there exists a sufficient community of interest among the temporary employees in the Supply Technician, Department Lead, and General Clerk positions, and the additional petitioned-for employees to warrant a separate unit. In fact, in Case 28-RC-6437, the Employer took the position that such employees must be included in any appropriate unit of temporary employees. In the hearing of this matter, the Employer indicated no variance from this position. Instead, it now claims that a self-determination election among any unit that does not include *all* employees in such classifications, permanent, as well as temporary, would be inappropriate. I agree. By including the temporary Supply Technicians, Department Leads, and General Clerks within the ASP, a residual unit of corresponding permanent employees, unlikely to receive separate representation, would be created. See, e.g., *G.L. Milliken Plastering*, 340 NLRB No. 138 (2003); *Carl Buddig & Co.*, 328 NLRB 929 (1999); *Fleming Foods*, 313 NLRB 948 (1994). To avoid this, I shall include those permanent employees who are Supply Technicians, Department Leads, and General Clerks, in the eligible voting group.

Finally, I find no merit in the Employer's argument that permitting a self-determination election among the temporary employees would allow them to numerically overshadow their permanent counterparts and, in effect, "take over" the existing collective-bargaining unit. First, the Employer has cited no authority for disallowing a self-determination election based on such a speculative, internal conflict of interest. Second, the Employer's concern, drawn from the Board's accretion doctrine, ignores the fundamental difference between the accretion process and a self-determination election. By definition, a self-determination election offers a new or, in this case, newly-eligible group of employees the right to determine how and whether they are represented. This is the polar opposite of accretion, which imposes representation in the absence of employee choice. While an accretion may potentially deprive a large, accreted group of their right to choose their own representative, this is simply not a concern in the self-determination context. As noted, the Board applies community-of-interest standards, not accretion principles, to situations in which temporary employees are sought to be included in an existing unit. The Board has specifically held that newly-hired temporary employees, who are assigned to classifications plainly included in the existing unit, do not raise accretion issues. *Gourmet Award Foods*, 336 NLRB 872 (2001). Accretion analysis and its attendant concerns are, therefore, inapplicable. *Id.*

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I shall direct an election in the following voting group:

All temporary employees, including Warehouse Specialists, Wood Workers, Material Handlers, Laborers, Supply Technicians, Department Leads and General Clerks, and all permanent Supply Technicians, Department Leads, and

General Clerks employed by Raytheon Technical Services Company, L.L.C. (Employer) at its Ammunition Supply Point at McGregor Range in New Mexico; excluding all other employees, guards, and supervisors within the meaning of the Act.

There are approximately 15 employees in the voting group in which the election is being directed.

DIRECTION OF ELECTION

I direct that an election by secret ballot be conducted in the above voting group at a time and place that will be set forth in the notice of election, that will issue soon, subject to the Board's Rules and Regulations. The employees who are eligible to vote are those in the voting group who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Also eligible are those in military services of the United States Government, but only if they appear in person at the polls. Employees in the voting group are ineligible to vote if they have quit or been discharged for cause since the designated payroll period; if they engaged in a strike and have been discharged for cause since the strike began and have not been rehired or reinstated before the election date; and, if they have engaged in an economic strike which began more than 12 months before the election date and who have been permanently replaced. All eligible employees shall vote whether they desire to be represented for collective-bargaining purposes by:

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or whether they desire to remain unrepresented. If a majority of the valid ballots in the election are cast for the Petitioner, the employees will be taken to have indicated their desire to be included in the existing certified Unit in Case 28-RC-6380, currently represented by the Petitioner, and it may bargain for those employees as part of that unit. If a majority of the valid ballots are cast against representation, the employees will be deemed to have indicated their desire to remain unrepresented.

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues before they vote, all parties in the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly,

I am directing that within seven (7) days of the date of this Decision, the Employer file with the undersigned, two (2) copies of an election eligibility list containing the full names and addresses of all eligible voters. The undersigned will make this list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, the undersigned must receive the list at the NLRB Regional Office, 2600 North Central Avenue, Suite 1800, Phoenix, Arizona, 85004-3099, on or before April 5, 2006. No extension of time to file this list shall be granted except in extraordinary circumstances. The filing of a request for review shall not excuse the requirements to furnish this list.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. The Board in Washington must receive this request by April 12, 2006. A copy of the request for review should also be served on the undersigned.

Dated at Phoenix, Arizona, this 29th day of March 2006.

/s/Cornele A. Overstreet
Cornele A. Overstreet, Regional Director
National Labor Relations Board, Region 28